



COUNTY OF LOS ANGELES

CLAIMS BOARD

500 WEST TEMPLE STREET

LOS ANGELES, CALIFORNIA 90012

MEMBERS OF THE BOARD

September 15, 2003

Maria M. Oms
Auditor-Controller
Lloyd W. Pellman
Office of the County Counsel
Rocky Armfield
Chief Administrative Office

Honorable Board of Supervisors
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: **Angel Ayala, by and through her Guardian Ad Litem,**
Diana Alvarado v. County of Los Angeles
Los Angeles Superior Court Case No. TC 010 069

Dear Supervisors:

The Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of \$500,000.00, plus assumption of the Medi-Cal Lien not to exceed \$128,065.71.
2. The Auditor-Controller be directed to draw warrants to implement this settlement from the Department of Health Services.

Enclosed is the settlement request and a summary of the facts of the case.

The Litigation Report, including the Corrective Action Report, is being transmitted to you under separate cover by the Department of Health Services.

Return the executed, adopted copy to Frances Lunetta, Suite 648 Kenneth Hahn Hall of Administration, Extension 4-1754.

Very truly yours,

Maria M. Oms, Chairperson
Los Angeles County Claims Board

MMO/fsl

Enclosure

MEMORANDUM

September 3, 2003

TO: LOS ANGELES COUNTY CLAIMS BOARD

FROM: CLYDE LOCKWOOD, Esq.
Patterson, Ritner, Lockwood, Gartner & Jurich

OWEN L. GALLAGHER
Principal Deputy County Counsel

RE: Angel Ayala, by and through her Guardian Ad Litem, Diana
Alvarado v. County of Los Angeles
Los Angeles Superior Court Case No. TC010069

DATE OF
INCIDENT: December 21-28, 1993

AUTHORITY \$500,000, Plus Assumption of the Medi-Cal Lien Not to Exceed
REQUESTED: \$128,065.71

COUNTY
DEPARTMENT: DEPARTMENT OF HEALTH SERVICES

CLAIMS BOARD ACTION:

☐ Approve

☐ Disapprove

☐ Recommend to Board of
Supervisors for Approval

_____, Chief Administrative Office
ROCKY A. ARMFIELD

_____, County Counsel
LLOYD W. PELLMAN

_____, Auditor-Controller
MARIA M. OMS

on _____, 2003

SUMMARY

This is a recommendation to settle for \$500,000 the medical negligence lawsuit brought by Angel Ayala, a minor, for the injuries he sustained as the result of treatment he received at King/Drew Medical Center from December 21, 1993, through December 28, 1993. The State, having paid \$128,065.71 for the provision of Medi-Cal care, has a claim for reimbursement, which will be settled by the County.

LEGAL PRINCIPLES

The County is liable for the failure of its hospital and medical staff to provide services consistent with the appropriate standard of care for the circumstances encountered.

SUMMARY OF FACTS

On December 21, 1993, at 9:15 a.m., Angel Ayala, an 8-month-old boy, was seen in the Emergency Room at King/Drew Medical Center with complaints of a high fever, and having suffered a seizure. At 9:58 a.m., Angel Ayala suffered another seizure, which medical personnel suspected was due to a sudden rise in Angel Ayala's temperature (febrile seizure). At 1:00 p.m., a long needle was inserted into Angel Ayala's spinal canal, at the level of the lumbar spine, to extract a sample of spinal fluid (lumbar puncture). Although the results of the lumbar puncture indicated that Angel Ayala might be suffering from an infection caused by a virus, the results were interpreted as normal.

On December 22, 1993, Angel Ayala suffered a transitory disturbance of motor, sensory, or autonomic function resulting from abnormal nerve discharges in a localized part of the brain (focal seizure) involving the left side of his body.

On December 23, 1993, at about 8:00 a.m., Angel Ayala suffered another focal seizure. Results of a study of recorded brain wave activity (electroencephalogram [EEG]) performed at 9:00 a.m., indicated a localized area of abnormal tissue (focal lesion) in a part of Angel Ayala's brain on the right side. An abnormal lumbar puncture suggesting a viral infection, focal seizures, and an abnormal EEG indicating a focal lesion in a part of the brain are, together, evidence of an inflammatory disease of the brain caused by a virus (herpes simplex virus). However, medical personnel failed to consider that Angel Ayala's symptoms might be due to herpes simplex virus. Accordingly, antiviral medication used to treat herpes simplex virus (Acyclovir) was not administered.

On December 25, 1993, a second lumbar puncture indicated that Angel Ayala was suffering from an infection caused by a virus. However, the results of the lumbar puncture were incorrectly interpreted as normal.

On December 28, 1993, Angel Ayala was discharged.

On January 25, 1994, Angel Ayala underwent a diagnostic imaging procedure (MRI) of the brain. Results of the MRI indicated extensive brain damage, which medical experts attribute to an inflammation of Angel Ayala's brain due to herpes simplex virus. Angel Ayala currently has profound mental retardation, muscular weakness or partial paralysis of the entire body (spastic quadriparesis), blindness, and severe speech deficits.

DAMAGES

If this matter proceeds to trial, the claimant will likely seek the following:

Angel Ayala,	
Future Medical Care	\$7,461,000
Loss of Future Earnings	\$1,079,283
 Pain and Suffering (MICRA limit)	 \$ <u>250,000</u>
 TOTAL	 \$8,790,283

The proposed settlement includes:

Angel Ayala,	
Cash Settlement	\$292,500
Attorneys Fees (MICRA Estimate)	\$ 97,500
Costs of Litigation	\$ 10,000
Reynaldo Ayala,	
Future Wrongful Death	\$ 50,000
Diana Alvarado,	
Future Wrongful Death	\$ <u>50,000</u>
 TOTAL	 \$500,000

A portion of the recommended settlement may be directed by claimants to be used to purchase an annuity. The amount and structure of the annuity has not been selected at this time.

STATUS OF CASE

The current trial date has been vacated pending approval of this settlement.

This matter was originally tried before a jury in March 1999, resulting in a verdict in favor of the County based upon the failure of the claimants to timely comply with the claims-filing requirements of the Government Code prior to filing their lawsuit. This verdict was appealed by the claimants, resulting in an overturning of the jury's verdict in June 2002, based

upon erroneous instructions given by the trial court. In July 2002, the case was ordered to be retried. In addition, due to the passing of the County's original defense attorney, it was necessary to assign this matter to another law firm for retrial.

Expenses incurred by the County of Los Angeles in the defense of this case through July 22, 2003, are attorneys fees of \$264,745.70 and \$66,930.89 in costs.

The total cost to the County of Los Angeles, as a result of this settlement, is as follows:

Indemnity (Settlement Amount)	\$500,000.00
County Attorneys Fees and Costs	\$332,676.59
Medi-Cal Lien	<u>\$128,065.71</u>
TOTAL	\$960,742.30

EVALUATION

Medical experts will be critical of the failure of medical personnel to appreciate, from December 21, 1993, through December 28, 1993, that Angel Ayala's symptoms might be the result of a viral infection caused by the herpes simplex virus, and their failure to administer Acyclovir to treat the infection. The failure to administer Acyclovir to treat Angel Ayala's viral infection is directly responsible for the results observed here.

We join with our private counsel, Patterson, Ritner, Lockwood, Gartner & Jurich, and our claims administrator, Octagon Risk Services, Inc., in recommending settlement in the amount of \$500,000, and payment of the Medi-Cal lien in the amount of \$128,065.71.

The Department of Health Services concurs in this settlement.